IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 250 of 1993

Date of decision: 11.12.2007

Naginder Singh **…Appellant.**

Versus

Anita and others **…Respondents.**

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The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the appellant **Mr. Ramakant Sharma with Mr. Malay Kaushal, Advocates.**

For respondents **:Mr. Ajay Sharma, Advocate, for respondents No. 1 to 10.**
Mr. D.S. Nainta, Dy. A.G. for respondent No. 11.

Surjit Singh, Judge(Oral)

Appellant is aggrieved by the judgment of the trial Magistrate, whereby criminal complaint under Sections 352, 447, 504, 506, 510, 148, 149, 150, 153, 395 and 120-B of the Indian Penal Code, filed by him against the respondents, has been dismissed and the respondents acquitted.

2. In the complaint it was alleged that the complainant's father was the joint owner of 'Abadi" land, bearing Khasra No. 3275, situate at Amb in District Una, but the possession of the entire area of the said Khasra number was exclusively with him. On 11.10.1991 the respondents, allegedly armed themselves with various weapons like 'Dandas', 'Daraties', rods and one of them even a pistol and went to the aforesaid Khasra number and started raising construction upon two to four Marlas area by utilizing the bricks, which had been stacked there by the

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Whether reporters of the local papers may be allowed to see the judgment?

complainant. When the respondents were sought to be checked, they hurled abuses and tried to assault the complainant and his agent Shri Nazar Mohammed. On 12.10.1991 the complainant, being attorney of his father, the owner of the land, filed a suit in the Court of Senior Sub Judge, Una. Stay was granted by the Senior Sub Judge in the form of a temporary injunction. Despite such stay order, the respondents continued with the construction and laid the slab. Report was lodged with the police also on 23.10.1991, but when no action was taken, complaint was filed in the Court on 25.10.1991.

3. Trial Court has acquitted the respondents holding that respondent No. 1 Anita had purchased 10 Marlas area out of the land, in question, from some of the co-sharers of complainant's father and she had raised the construction on a portion of the area so purchased by her and, therefore, there was no question of criminal trespass. The allegation of the complainant that the bricks, which were utilized in the construction, belonged to him did not find favour with the trial Magistrate, because the evidence with regard to the allegation was found to be self-contradictory.

4. We have heard the learned counsel for the parties and gone through the record. We see no reason to disagree with the view taken by the trial Court.

5. The complainant placed on record Jamabandi for the year 1980-81, wherein the father of the complainant is recorded in exclusive possession of Khasra No. 3275 as a co-sharer. We find on record copy of Khasra Girdawari Ext. P-3 for the period from 1982 to 1992. There is an entry in red-ink in the column pertaining to 'Rabi 1988' that on the basis of mutation No. 4403, pertaining to the sale of 10 Marlas area in favour of respondent No. 1 by co-sharers Naginder Singh etc., she had come in

possession of 10 Marlas area. There is another entry in red-ink in Ext. P-3 (copy of Khasra Girdawari) that on the basis of mutation No. 4441, pertaining to partition, all the three groups of co-sharers are in joint possession to the extent of 1/3rd share each. Now, when partition had taken place and all the co-sharers had been held to be in joint possession to the extent of their shares, per mutation No. 4441 and respondent No. 1 had also been recorded in possession of 10 Marlas area, which she purchased from co-sharers Naginder Singh etc., vide mutation No. 4403, as per note in the Khasra Girdawari, Anita and the other respondents could not be said to have committed the offence of criminal trespass, by raising construction on 10 Marlas area purchased by Anita from Narinder Singh etc., some of the co-sharers.

6. As regards the allegation of theft of bricks, evidence of the complainant is self-contradictory. The complainant himself testified as PW-1 that the bricks had been purchased by him in July / August, 1991, but the other witnesses stated that the bricks had been collected from the debris of the old structures lying on the spot. The allegation regarding the respondents having armed themselves with weapons like 'Daraties', 'Dandas', rods and a pistol, appears to be an after-thought. The earliest version, which was given to the police on 23.10.1991, does not bear a mention of the respondents' being armed with such weapons, despite the fact that even this version was given to the police, twelve days after the alleged occurrence.

7. In view of the above stated position, appeal is dismissed.

(Surjit Singh)
Judge

December 11, 2007 (BC)

(Surinder Singh)
Judge